REMARKS

Reconsideration of the present application is respectfully requested. Claims 4, 21, 15, 22, 34-39, and 41 stand rejected on judicially created double patenting grounds based in whole or in part on the claims of U.S. Patent No. 6,774,974 (" '974 patent"). The applicants submit that pursuant to 35 U.S.C. § 121 the parent '974 patent cannot be cited against the present divisional application.

The filing of the present application was necessitated by a restriction requirement imposed by the examiner in the course of prosecuting the '974 patent application. In response to the restriction requirement, the applicants withdrew claims 4, 21 and 22 from consideration. In the office action issued in response to that paper withdrawing those claims from consideration, the examiner, on his own initiative, withdrew claims 15, 34 and 42 from consideration, contending they were also directed to the non-elected, patentability distinct species. Claims 4, 15, 21, 22 and 38 are now presented in the present divisional application.

Reading the law on these facts, it is clear that the present double patenting rejection is prohibited. The third sentence of 35 U.S.C. §121 provides that:

> "A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, *shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them,* if the divisional application is filed before the issuance of the patent on the other application." (Emphasis added)

The above makes clear that the '974 patent cannot be cited against the claims of the present divisional application, which was filed in response to the restriction requirement. Since claims 4, 15, 21 and 22 are only rejected on double patenting grounds, these claims are now in condition of allowance.

Claims 35-39 stand rejected under 35 U.S.C. §103(a) as unpatentable over Horie et al. in view of Miyachi et al. and Shimura et al. (JP-411160716A). These rejections cannot stand because the Miyachi et al. and Shimura et al. references are not prior art with respect to the present application. The present application was filed April 13, 2004 as a divisional of a parent application filed August 19, 1999. The present application and its parent both claim the benefit of a Japanese patent application filed August 28, 1998.

Thus, Miyachi et al. is not prior art because it is based on a U.S. patent application filed on October 5, 1998, which is less than one year prior to the present parent application's U.S. filing date. Further, because the present application claims priority in Japan back to August 28, 1998, Miyachi's U.S. filing date is antedated, and cannot be cited as a reference against the present application.

Shimura et al. is not prior art because it was published on June 18, 1999, and therefore the Japanese priority filing of the present application antedates the effective date of this reference as well. Thus, it too cannot be cited as a reference against the present application.

Submitted herewith is a copy of a certified translation of the present application priority document filed in Japan on August 28, 1998. This document was previously submitted in the parent application to the present divisional application. Accordingly, in view of the provisions of 35 U.S.C. §119, the applicants submit that the rejection under 35 U.S.C. §103(a) as unpatentable over Horie et al. in view of Miyachi et al. and Shimura et al. (JP-411160716A) has been overcome.

Wherefore, based upon the foregoing, it is submitted that the present application is in condition of allowance, and a relatively early reply would be greatly appreciated.

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